



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[USCBP-2016-0007]

Receipt of Domestic Interested Party Petition Concerning the Tariff Classification of a Steel Tube Fitting

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice; solicitation of comments.

SUMMARY: U.S. Customs and Border Protection (CBP) has received a petition submitted on behalf of a domestic interested party requesting the reclassification under the Harmonized Tariff Schedule of the United States (HTSUS) of a steel tube fitting from Taiwan. CBP classified the steel tube fitting under subheading 7307.99.50, HTSUS, which provides for: “Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel: Other: Other: Other.” The 2015 column one, general rate of duty is 4.3 percent ad valorem. Petitioner contends that the proper classification for the steel tube fitting is under subheading 8412.90.90, HTSUS, which provides for: “Other engines and motors, and parts thereof: Parts: Other.” Petitioner asserts that some of its competitors are classifying all or a substantial portion of similar fittings as parts of hydraulic systems, under subheading 8412.90.90, HTSUS, which is duty free, thus placing Petitioner at a competitive disadvantage. This document invites comments with regard to the correctness of the current classification.

DATE: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2016-0007.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 90 K St., NE, 10th Floor, Washington, DC 20229-1177.

Instructions: All submissions received must include the agency name and docket number for this notice of domestic interested party petition concerning the tariff classification of steel tube fittings. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents, exhibits, or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m., at Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in

advance by calling Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325-0118. Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public's convenience.

FOR FURTHER INFORMATION CONTACT: Dwayne Rawlings, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, at (202) 325-0092.

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of Brennan Industries, Inc. ("Petitioner"), which manufactures various hydraulic connectors, fittings and adapters in Solon, Ohio. Brennan meets all of the requirements of a domestic interested party set forth in 19 U.S.C. 1516(a)(2) and section 175.3(a) in Title 19 of the Code of Federal Regulations (CFR).

In New York Ruling (NY) E83408, dated July 8, 1999, a steel tube fitting from Taiwan is described as a "cold forged nonalloy steel male threaded connector body having a center hex nut, one flare tube end and one male pipe end. These tube fittings connect a piece of rigid tubing to a valve, manifold or another piece of rigid tubing in a

hydraulic system.” CBP classified the steel tube fitting in subheading 7307.99.50, Harmonized Tariff Schedule of the United States (HTSUS), as a tube or pipe fitting of iron or steel, other, other, other. Petitioner contends that the proper classification for the fitting is subheading 8412.90.90, HTSUS, which covers “Other engines and motors, and parts thereof: Parts: Other.” In 1999, the column one, general rate of duty for subheading 7307.99.50, HTSUS, was 4.3 percent ad valorem, and for heading 8412, HTSUS, it was “Free” (the current duty rates are respectively 4.3% ad valorem and “Free”).

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may be applied, in numerical order.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding on the contracting parties and, therefore, not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CBP’s position is that the ENs should always be consulted. See Treasury Decision (T.D.) 89-80, 54 FR 35127, 35128 (Aug. 23, 1989).

The Petitioner's Views

Petitioner contends that the proper classification for the fitting is subheading 8412.90.90, HTSUS, which covers “Other engines and motors, and parts thereof: Parts: Other.” Petitioner notes that the ENs for Section XV, HTSUS, (which covers heading 7307, HTSUS), make clear that Section XV, HTSUS, does not cover “[a]rticles of Section XVI (machinery, mechanical appliances and electrical goods, which include hydraulic system parts).” See EN 1(f) to Section XV. Section XVI, HTSUS, covers heading 8412, HTSUS. Petitioner also recognizes that Legal Note 1(g) to Section XVI excludes certain products from Section XVI coverage, including, inter alia, parts of general use, as defined in Note 2 to Section XV, of base metal (section XV), or similar goods of plastics (chapter 39). See also EN 1(g) to Section XVI (“parts of general use” is defined throughout the tariff schedule to mean, inter alia, articles of heading 7307). Referencing Note 2(b) to Section XVI, Petitioner then asserts that machine parts, if suitable for use solely or principally with a particular kind of machine of heading 8412, are to be classified with that machine or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538, as appropriate. Petitioner also cites to HQ 956743 (dated January 24, 1995), NY I82861 (dated June 28, 2002), and NY K89798, supra (dated October 18, 2004; incorrectly cited by the Petitioner as NY K89789).

Petitioner maintains the fitting of NY E83408 is “solely imported, sold and specifically designed according to hydraulic system industry specifications for use in assembly of particular hydraulic engine or motor systems,” and is essential to the

effective and safe operation of the subassemblies and components to which they are parts. As such, according to Petitioner, it is classifiable in subheading 8412.90.90, HTSUS, which specifically covers “other hydraulic engine and motor parts.” Petitioner also contends that CBP’s classification is incorrect because the fitting consists of more than one material or substance, thus implicating GRI 2(b) and GRI 3. Petitioner proceeds to reason that the fitting is prima facie classifiable as both a “tube and pipe fitting” of heading 7307, HTSUS, and an “other hydraulic engine or motor part” of heading 8412, HTSUS, and, therefore, GRI 3 is applicable. Petitioner then reasons that GRI 3(a) cannot determine classification of the fitting because the competing headings are equally specific, and GRI 3(b) is inapplicable as well because the fitting’s essential character cannot be determined. Therefore, applying GRI 3(c), Petitioner concludes that heading 8412, HTSUS, is the proper heading because it is last in numerical order behind heading 7307, HTSUS.

Analysis Used by CBP in Prior Ruling

In the ruling that is the subject of this petition, CBP held that a cold-forged, non-alloy, steel tube fitting that connects rigid tubing to valves, manifolds or other pieces of rigid tubing in a hydraulic system is classified in subheading 7307.99.50, HTSUS, as other tube or pipe fitting (for example, couplings, elbows, sleeves), of iron or steel. It is CBP’s position that the subject fitting is a part of general use that can connect tubes and pipes, and is thus classified under heading 7307, HTSUS, by application of GRI 1 and the

exclusionary effect of Legal Note 1(g) to Section XVI. In order for classification by application of GRI 3 to be appropriate, a good must be unable to be classified by application of GRIs 1 or 2, and the good must be prima facie classifiable in two or more headings. In this instance, goods of heading 7307, HTSUS, are explicitly excluded from heading 8412, HTSUS, by application of Legal Note 1(g) to Section XVI. Therefore, GRI 3 is not applicable. Historically, CBP has recognized that, for tariff purposes, hoses are not interchangeable with pipes or tubes. In HQ 088393, dated March 26, 1991, CBP examined the difference between hose fittings, and tube or pipe fittings. In that ruling, CBP first noted that the courts have long recognized that although a "hose" may be considered a "tube" in common meaning, they are not interchangeable terms for tariff purposes. Citing John V. Carr & Son, Inc. v. United States, 76 Cust.Ct. 162, C.D. 4652 (1976) (interpreting the meanings of the terms "hose" and "pipes and tubes" within the context of the Tariff Schedule of the United States (TSUS)); see also J.E. Bernard & Co., Inc. v. United States, 64 Cust.Ct. 425, C.D. 4029 (1970) (in comparing the TSUS tariff terms "copper tubing" and "flexible metal tubing," the court expressed the principle that quite often articles that literally appear to respond to the common meaning of a tariff term are not the articles classified in a tariff sense); R.J. Saunders & Co., Inc. v. United States, 49 C.C.P.A. 87, C.A.D. 801 (1962). Thus, under the TSUS, CBP consistently held that hose fittings are not properly classifiable under the TSUS provision for pipe and tube fittings. See C.I.E. 953/63 (July 2, 1963), C.I.E. 1684/65 (October 18, 1965), TC 465.251 M (June 18, 1968), TC 426.89 AS (November 27, 1968), MFG 423.371 G (September 8, 1970), and HQ 064538 (April 17, 1980). While prior TSUS cases are not dispositive, "[n]evertheless, on a case-by-case basis prior decisions should be considered

instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS.” H.R. Conf. Rep. No. 100-576, at 549-50 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1582-83; see also NY 870421, dated February 7, 1992.

The text of heading 7307, HTSUS, provides for “tube or pipe fittings,” which is similar to the TSUS text in the cases discussed above (“pipe and tube fittings,” heading 613, TSUS). Thus, with regard to the competing HTSUS provisions at issue, CBP’s position is that if an iron or steel fitting is a part of general use and is designed in such a manner where it can be used in conjunction with tubes or pipes, or tubes, pipes and hoses, that fitting is classified in heading 7307. See NY K87518, dated July 21, 2004; see also NY H87517, dated February 20, 2002.

However, and again with regard to the competing headings at issue, if such fittings meet the terms of Note 2 to Section XVI and are considered to be parts of hydraulic systems, such as hose fittings (as opposed to “parts of general use” of heading 7307, HTSUS), they are classified in heading 8412, HTSUS. See NY K89798, dated October 18, 2004; NY N006172, dated February 28, 2007; NY H82321, dated June 25, 2001; NY N242950, dated June 26, 2013; see also HQ 956743, dated January 24, 1995 (stating the general principle).

CBP concludes that the subject fittings are parts of general use that can connect tubes and pipes, and are thus classified under heading 7307, HTSUS, by application of GRI 1 and the exclusionary effect of Legal Note 1(g) to Section XVI. Finally, with regard to Petitioner’s argument that GRI 3 is applicable, in order for classification by

application of GRI 3 to be appropriate, a good must be unable to be classified by application of GRIs 1 or 2, and the good must be prima facie classifiable in two or more headings. In this instance, goods of heading 7307, HTSUS, are explicitly excluded from heading 8412, HTSUS, by application of Legal Note 1(g) to Section XVI. Therefore, GRI 3 is not applicable. In addition, GRI 3 does not apply because the fittings do not consist of more than one material or substance.

Comments

Pursuant to section 175.21, CBP Regulations (19 CFR 175.21), before making a determination on this matter, CBP invites written comments on the petition from interested parties.

The domestic interested party petition concerning the tariff classification of hydraulic system fittings, as well as all comments received in response to this notice, will be available for public inspection on the docket at www.regulations.gov. Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public's convenience.

Authority

This notice is published in accordance with 19 U.S.C. 1516 and section 175.21 of the CBP Regulations (19 CFR 175.21).

Dated: February 4, 2016.

R. Gil Kerlikowske,
Commissioner,
U.S. Customs and Border Protection.

BILLING CODE 9111-14

[FR Doc. 2016-02555 Filed: 2/8/2016 8:45 am; Publication Date: 2/9/2016]